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12 UNITED STATES DISTRICT COURT  
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
14

15 AMERICAN CIVIL LIBERTIES  
16 UNION FOUNDATION OF  
SOUTHERN CALIFORNIA,

17 Plaintiff,

18 v.

19 UNITED STATES IMMIGRATION  
20 AND CUSTOMS ENFORCEMENT, et  
al.,

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

No. 2:22-cv-04760-SHK

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR JUDGMENT ON  
THE PLEADINGS; MEMORANDUM  
OF POINTS & AUTHORITIES IN  
SUPPORT**

(Filed concurrently with [Proposed] Order)

Hearing Date: August 8, 2023  
Hearing Time: 11:00 a.m.  
Courtroom: 3 or 4  
Honorable Shashi H. Kewalramani  
United States Magistrate Judge

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**NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS**

PLEASE TAKE NOTICE that, on August 8, 2023 at 11:00 a.m., as soon thereafter as they may be heard, Defendants U.S. Department of Homeland Security, U.S. Department of Homeland Security Office of Inspector General, and U.S. Immigration and Customs Enforcement (collectively, “Defendants”) will, and hereby do, move this Court for an order entering judgment in Defendants’ favor on the pleadings. This motion will be made in the George E. Brown, Jr. Federal Building and Courthouse before the Honorable Shashi H. Kewalramani, United States Magistrate Judge, located at 3470 Twelfth Street, Riverside, CA 92501, Courtroom 3 or 4, 3<sup>rd</sup> Floor.

Defendants bring their motion pursuant to Federal Rule of Civil Procedure 12(c) on the ground that Plaintiff American Civil Liberties Union of Southern California (“ACLU SoCal”) failed to submit a request to Defendants under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, that “reasonably describes” the records sought, and therefore, Plaintiff fails to plausibly allege a violation of the FOIA.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, the Request for Judicial Notice, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which was held on June 21, 2023.

1 Dated: July 5, 2023

Respectfully submitted,

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Federal agencies are only required to respond to Freedom of Information (“FOIA”) requests that “reasonably describe[]” the records requested. *See* 5 U.S.C. § 552(a)(3)(A). Plaintiff’s FOIA requests fail to do so because they are impermissibly overbroad in their scope. Not only does Plaintiff seek nine overly broad categories of records, but within each category it relies on its own specially defined and expansive definitions such that it cannot be said the requests provide a reasonable description enabling Defendants to locate the requested records. Compounding the requests’ deficiencies, many are “springing requests” that would necessarily require Defendants to not only try to locate responsive records as to certain requests but then engage in an evaluation of those records to formulate further searches to respond to other categories included within the requests. This is improper and seeks to put on Defendants obligations not otherwise imposed under the FOIA.

Because Plaintiff has failed to plausibly allege a FOIA violation, Defendants are entitled to judgment on the pleadings.

### **II. STATEMENT OF FACTS & PROCEDURAL HISTORY**

On April 29, 2022, Plaintiff submitted a FOIA request to Defendants seeking “any and all records that were prepared, received, transmitted, collected, and/or maintained by Immigration and Customs Enforcement (“ICE”) or the Department of Homeland Security (“DHS”) that describe, refer, or relate to the release of hospitalized detainees from custody prior to their death; any records related to release of individual detainees once hospitalized; and any records related to the death of such detainees after their release from custody, including any communications or investigations” Dating from January 1, 2016. Dkt. 1-1 at 3-4.

In that request, Plaintiff specified that it was seeking records in the following nine categories:

1. Any and all documents, without limitation to date, including any

communications, investigatory reports, and any and all exhibits, appendices, or attachments thereto, relating to the hospitalization, death, decision to release from custody, or release from custody of the following individuals.

Name	County of Origin	Approximate Date of Death	ICE Detention Facility Prior to Hospitalization and Death	Location at Death
Teka Gulema	Ethiopia	January 18, 2016	Etowah County Detention Center, Alabama	Riverview Medical Center, Gadsden, AL
Johana Medina Leon	El Salvaor	May 23-June 1, 2019	Otero County Processing Center, New Mexico	Del Sol Medical Center, El Paso, TX
Jose Ibarra Bucio	Mexico	March 21, 2019	Adelanto ICE Processing Center, California	Loma Linda University Medical Center, Loma Linda, CA
Martin Vargas Arellano	Mexico	March 6, 2021	Adelanto ICE Processing Center, California	St. Judge Medical Center, Fullerton, CA

2. Any and all DHS OIG reports of investigation that are identified in any of the records responsive to Request #1. This includes any and all exhibits, appendices, or attachments to the DHS OIG reports of investigation.

3. Any and all ICE OPR reports of investigation that are identified in any of the records responsive to Request #1. This includes any and all exhibits, appendices, or attachments to the DHS OPR reports of investigation.

4. Any and all documents and communications, including ICE and IHSC directives, policies, procedures, protocols, or trainings that contain guidance, instructions, or standards about the release from custody of (a) hospitalized detainees; or (b) detainees who at the time of release were patients in the care of external healthcare providers or facilities. Detainees specified in (a) and (b) above shall include those being treated for COVID-19 during their hospitalization or

1 treatment at external healthcare providers or facilities.

2 5. Spreadsheets, emails, documents, communications, databases, lists, and other  
3 data compilations in the possession of ICE Leadership, ICE Enforcement and  
4 Removal Operations, ICE Health Service Corps, and ICE Office of Professional  
5 Responsibility that identify detainees who were released from custody while (a)  
6 hospitalized (including for COVID-19 treatment); (b) in the full-time care of  
7 external healthcare providers or facilities (including for COVID-19 treatment), or  
8 (c) released from custody immediately prior to transfer to an emergency room,  
9 hospital, or external care facility. Requested materials include, but are not limited  
10 to, dates of hospitalization of detainees, dates of hospital or external care facility  
11 discharge, name of treated detainees' detention facilities, and reasons for  
12 detainees' hospitalization or external medical care. These materials should further  
13 include Medical Transfer Summary documents from DHS's eHR System and  
14 Alien Medical Records System, and any versions of the Significant Detainee  
15 Illness Spreadsheet that identify detainees who were released from custody while  
16 (a) hospitalized (including for COVID-19 treatment); (b) in the care of external  
17 healthcare providers or facilities (including for COVID-19 treatment); or (c)  
18 released from custody immediately prior to transfer to an emergency room,  
19 hospital, or external care facility.

20 6. Spreadsheets, emails, significant incident reports (SIRs), significant event  
21 notification reports (SENs), or documents created by DHS OIG or ICE OPR that  
22 mention the release from custody of (a) hospitalized detainees; (b) detainees who  
23 at the time of release were patients in the care of external healthcare providers or  
24 facilities; or (c) detainees released from custody immediately prior to transfer to  
25 an emergency room, hospital, or external care facility.

26 7. Spreadsheets, emails, SIRs, SENs, or documents created by DHS OIG or ICE  
27 OPR that mention the death of any detainee who had been previously released  
28 from custody while (a) hospitalized; or (b) a patient in the care of an external  
healthcare provider or facility; or (c) released from custody immediately prior to  
transfer to an emergency room, hospital, or external care facility.

8. Any and all documents, communications, and other records, including  
databases, spreadsheets, lists, and other data compilations, that identify detainees  
who were hospitalized or transferred from detention for off-site medical care due  
to COVID-19, and were subsequently released from custody while hospitalized, or  
detainees who were released from custody immediately prior to transfer to an  
emergency room, hospital, or external care facility to receive treatment for  
COVID-19. Requested information includes, but is not limited to, dates of

1 hospitalization, detention facility, medical condition/reason for hospitalization or  
2 treatment, name and location of hospital, date of return to detention (if any), date  
3 of release from custody or issuance of order of recognizance (if any), and/or  
4 reason for release from custody.

5 9. Bills, invoices, charges, or records of payment that reflect payments made for  
6 healthcare for any detainee who was released from custody while (a) hospitalized;  
7 or (b) a patient in the care of an external healthcare provider or facility, and  
8 communications about such bills, invoices, charges, or records of payment[.]

9 Dkt. 1-1 at 5-7.

10 In regard to the categories sought, Plaintiff defined the scope with overly broad  
11 terms and definitions. *See id.* at 1-1 at 4-5. And the requests were not limited to certain  
12 individuals, offices, or divisions, but encompass all of ICE and DHS OIG if not also  
13 DHS. ICE is defined as “Immigration and Customs Enforcement, and any components,  
14 subcomponents, offices, or personnel therein.” *Id.* at 4. Similarly, DHS OIG is defined as  
15 the “Department of Homeland Security Office of Inspector General and any component  
16 and offices therein.” *Id.* at 5. Although some requests relate to certain named detainees,  
17 most of the requests seek records regarding detainees more broadly, as Plaintiff defined  
18 “detainee” as “any person detained or formerly detained in an immigration facility or  
19 holding facility.” *Id.* In turn, “immigration detention facility” is defined broadly as  
20 “Service Processing Centers, Contract Detention Facilities, Family Residential Facilities,  
21 Intergovernmental Service Agreement (IGSA) Facilities, Dedicated Intergovernmental  
22 Service Agreement (DIGSA) Facilities, Intergovernmental Agreement (IGA) Facilities,  
23 and any other facilities where individuals may be held in ICE custody for 72 hours or  
24 more.” *Id.*

25 Both ICE and DHS OIG acknowledged receipt of Plaintiff’s request on May 16,  
26 2022. Dkt. 1-2, 1-3. Two months later, after not receiving responsive documents,  
27 Plaintiff filed this action. Dkt 1. In October 2022, Plaintiff filed its operative First  
28 Amended Complaint, adding DHS OIG as a defendant. Dkt. 24. After Defendants

1 answered, Dkt. 26, the parties filed their Joint Rule 26(f) Report. Dkt. 28 at 9.<sup>1</sup>

### 2 **III. LEGAL STANDARD**

#### 3 **A. Fed. R. Civ. P. 12(c)**

4 “After the pleadings are closed but within such time as not to delay the trial, any  
5 party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). Rules 12(b)(6)  
6 and 12(c) are substantively identical. *See* William W. Schwartz, A. Wallace Tashima  
7 & James M. Wagstaffe, *Federal Civil Procedure Before Trial* § 9:319. For a Rule 12(c)  
8 motion, the Court accepts the allegations of the non-moving party as true. *Hal Roach*  
9 *Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989); *Doleman v.*  
10 *Meiji Mut. Life Ins. Co.*, 727 F.2d 1480, 1482 (9th Cir. 1984). If the complaint fails to  
11 articulate a legally sufficient claim, the complaint should be dismissed or judgment  
12 granted on the pleadings. *Id.* Courts do not “accept as true allegations that are merely  
13 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead*  
14 *Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). And even when a court accepts  
15 facts as true, “a plaintiff may plead [him]self out of court” if he “plead[s] facts which  
16 establish that he cannot prevail on his ... claim.” *Weisbuch v. Cnty. of Los Angeles*, 119  
17 F.3d 778, 783 n.1 (9th Cir. 1997) (quotation marks and citation omitted).

18 A court may consider the allegations in the complaint as well as documents  
19 attached to the complaint, incorporated by reference in the complaint, matters of public  
20 record, or facts otherwise subject to judicial notice in ruling on a Rule 12 motion. *See*  
21 *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980); *Vasserman v. Henry*  
22 *Mayo Newhall Mem’l Hosp.*, 65 F. Supp. 3d 932, 942 (C.D. Cal. 2014). “A court may,  
23 however, consider certain materials...without converting the motion to dismiss into a  
24 motion for summary judgment.” *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.

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25  
26 <sup>1</sup> In that report, Defendants observed the similarity between the FOIA request at  
27 issue here and a nearly identical one submitted by the ACLU in *ACLU v. DHS*, D.C.  
28 District Court Case No. 1:21-cv-02627. Facing Defendants’ Motion to Dismiss in that  
case, the ACLU voluntarily dismissed that action on June 28, 2022. *See id.* at Dkt. 17.  
Just two weeks later, Plaintiff filed this action.

2003).<sup>2</sup> For instance, a court may take judicial notice of material even if not physically attached to the complaint if its authenticity is uncontested and it is necessarily relied on within the complaint. *Lee v. City of L.A.*, 250 F.3d 266, 288 (9th Cir. 2001), *overruled on other grounds*, *Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002); *United States v. Corinthian Colleges*, 655 F.3d 984, 998-99 (9th Cir. 2011); *Kniesel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005).

#### IV. ARGUMENT

##### A. The First Amended Complaint Fails to State a Claim that Defendants Are Improperly Withholding Records Responsive to a “Reasonably Described” FOIA Request.

The FOIA provides that an agency must respond to any request for records that “(i) reasonably describes such records and (ii) is made in accordance with published [agency] rules” by promptly making the requested records available, 5 U.S.C. § 552(a)(3)(A), or, if applicable, by invoking one of FOIA’s exemptions. *Id.* § 552(b).<sup>3</sup> “An agency’s disclosure obligations are not triggered, however, until it has received a proper FOIA request in compliance with [the agency’s] published regulations.” *See Burrus v. U.S. Dep’t of Agric. Forest Service*, 2023 WL 3456832, at \*2 (E.D. Cal. May 15, 2023) (quoting *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 26 (D.D.C.

<sup>2</sup> During the parties’ L.R. 7-3 conference, Plaintiff stated it intends to ask the Court to convert this motion to one for summary judgment. This is unnecessary because any post-filing discussions between the parties are not relevant to the scope of this motion. *See Freedom Watch, Inc. v. Dep’t of State*, 925 F. Supp. 2d 55, 62 (D.D.C. 2013) (“[Plaintiff’s] realization that its requests may have been too broadly framed is not relevant to the question before this Court: the sufficiency of the requests submitted to the Defendant Agencies challenged for insufficient (or no response) in the Complaint.”) (citation); *see also Porter v. CIA*, 579 F. Supp. 2d 121, 128 n. 7 (D.D.C. 2008) (cautioning against “[a]llowing a plaintiff who circumvents a detailed administrative scheme to seek judicial review in federal court.”)

<sup>3</sup> DHS’s regulations also require that DHS and its components produce non-exempt records after a requestor reasonably describes the records sought. 6 C.F.R. §§ 5.3(b), 5.4. However, this Court need not analyze whether Plaintiff’s request violates DHS regulations because if the request violates FOIA’s “reasonably describes” requirement, it also violates those regulations. *See Am. Center for Law and Justice v. U.S. Dep’t of Homeland Security*, 573 F. Supp. 3d 78 (D.C. 2021) (citing *Freedom Watch, Inc. v. Dep’t of State*, 925 F. Supp. 2d 55, 60 n.1 (D.D.C. 2013)). “DHS rules incorporate the Act’s ‘reasonably describes’ requirement.” *Id.* (citing 6 C.F.R. § 5.3(b)).

2008). Thus, a plaintiff fails to state a FOIA claim where its request does not reasonably describe the records sought. *See Evans v. Bureau of Prisons*, 951 F.3d 578, 583 (D.C. Cir. 2020) (quoting 5 U.S.C. § 552(a)(3)(A)) (“Under FOIA, an agency is only obligated to release nonexempt records if it receives a request that ‘reasonably describes such records.’”). Although “courts have been wary to prohibit this requirement from becoming a loophole through which federal agencies can deny the public access to legitimate information, it has been held that broad, sweeping requests lacking specificity are not permissible.” *Marks v. United States*, 578 F.2d 261, 263 (9th Cir. 1978).

The history of 5 U.S.C. § 552(a)(3)(A) helps clarify the meaning of the term “reasonably describes” as it applies to FOIA. The counterpart to Section 552(a)(3)(A) that existed in the 1967 enactment of FOIA stated: “Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person.” Pub. L. No. 90-23, 81 Stat. 54 (1967). In *Irons v. Schuyler*, 465 F.2d 608 (D.C. Cir. 1972), the D.C. Circuit explained that the “identifiable records” requirement “calls for a reasonable description enabling the Government employee to locate the requested records.” *Id.* at 612 (quoting *Bristol-Myers Co. v. FTC*, 424 F.2d 935, 938 (D.C. Cir. 1970)). Accordingly, it held that a request—for “all unpublished manuscript decisions of the Patent Office, together with such indices as are available”—was not a request for “identifiable records” because “the contours of the records . . . described are so broad in the context of the Patent office files as not to come within a reasonable interpretation of ‘identifiable records[.]’” *Id.* at 610, 613.

Congress inserted the term “reasonably describes” “in 1974 in replacement of the words ‘request for identifiable records,’ the terminology of Section 3 [of FOIA] as originally enacted in 1967.” *Truitt v. Dep’t of State*, 897 F.2d 540, 544 (D.C. Cir. 1990). A request “reasonably describes” agency records when it “would be sufficient [to enable] a professional employee of the agency who was familiar with the subject area of

the request to locate the record with a reasonable amount of effort.”<sup>4</sup> *Id.* at 545 n.36. The professional-employee test is an objective test, and courts are equipped to make this determination by resort to the FOIA request alone. *See Dale v. IRS*, 238 F. Supp. 2d 99, 105 (D.D.C. 2002) (noting that document request was deficient “on its face”). In other words, agencies need not introduce evidence showing that, based on a particular document request, their professionals are incapable of locating the requested records with a reasonable amount of effort. *See Borden v. FBI*, No. 94-1029, 1994 U.S. App. LEXIS 16157, at \*1-2 (1st Cir. 1994) (per curiam) (“[T]he request which plaintiff allegedly presented . . . does not reasonably describe the records sought. Since the complaint shows on its face that the plaintiff did not present a proper request, we need not consider defendant’s remaining arguments.” (citations omitted)). Ultimately, FOIA does not require an agency to engage in such “an all-encompassing fishing expedition . . . at taxpayer expense.” *Dale*, 238 F. Supp. 2d at 105.

Thus, the FOIA requests here, along with the operative First Amended Complaint, must be analyzed in relation to whether the requests satisfy the requirements of a reasonably described request for records.

**1. Plaintiff’s FOIA Requests are too Vague and Overbroad to Reasonably Describe the Records Sought**

“Broad, sweeping requests lacking specificity are not permissible,” nor are

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<sup>4</sup> The Attorney General’s Memorandum on the 1974 Amendments to FOIA promulgated by Attorney General Edward H. Levi (the “Attorney General’s Memorandum”) in 1975 contains the Executive Branch’s contemporaneous interpretation of the 1974 amendments to FOIA, which the Supreme Court and the D.C. Circuit have viewed as “a reliable guide in interpreting FOIA.” *Chiquita Brands Int’l, Inc. v. SEC*, 805 F.3d 289, 295-96 (D.C. Cir. 2015) (quoting *FCC v. AT&T Inc.*, 562 U.S. 397, 409 (2011)). The Attorney General’s Memorandum explains the change from “identifiable” to “reasonably describes” as “serv[ing] basically to clarify rather than to alter the law as it has been understood by several courts and many agencies.” Attorney General’s Mem. at 22. “It is not enough that the request provide enough data to locate the record; it must enable it to be located in a manner which does not involve an unreasonable amount of effort.” *Id.* at 23. The Attorney General’s Memorandum was reprinted in the House Committee on Government Operations and Senate Committee on the Judiciary, Freedom of Information Act and Amendments of 1974 (P.L. 93-502), 94th Cong., 1st Sess., 507, 518-19 (Jt. Comm. Print 1975).

1 requests that would require the agency to “engage in quite a bit of guesswork to  
 2 execute.” *Yagman v. Pompeo*, 868 F.3d 1075, 1081 (9th Cir. 2017) (citing *Marks v.*  
 3 *United States*, 578 F.2d 261, 263 (9th Cir. 1978)). Even a cursory review reveals that  
 4 most requests – including Nos. 1, 4 & 8 – do not request identifiable records at all but  
 5 request “any and all” documents and “communications” “relating to,” “regarding,”  
 6 “related to,” or that “identify” certain subjects. Requests that include language such as  
 7 “relate in any way to” are too vague. *See, e.g., Freedom Watch, Inc. v. Dep’t of State*,  
 8 925 F. Supp. 2d 55, 61 (D.D.C. Feb. 27, 2013) (holding request for “ ‘all’ records that  
 9 ‘relate to’ each subject area” “overbroad since life, like law, is ‘a seamless web,’ and all  
 10 documents ‘relate’ to all others in some remote fashion”) (citation omitted); *Shapiro v.*  
 11 *CIA*, 170 F. Supp. 3d 147, 155 (D.D.C. 2016) (“[T]here is a difference in kind between  
 12 requests for documents that ‘mention’ or ‘reference’ a specified person or topic and  
 13 those seeking records ‘pertaining to,’ ‘relating to,’ or ‘concerning’ the same.”); *Latham*  
 14 *v. Dep’t of Just.*, 658 F. Supp. 2d 155, 161 (D.D.C. 2009) (a request for records “that  
 15 pertain in any form or sort to [the plaintiff]” was “overly broad”); *Dale v. IRS*, 238 F.  
 16 Supp. 2d 99, 104 (D.D.C. 2002) (request for documents “that refer or relate in any way  
 17 to [the plaintiff]” did not reasonably describe the records sought).<sup>5</sup>

18 To illustrate the vagueness of Plaintiff’s requests, Request No. 8 seeks “[a]ny and  
 19 all documents, communications, and other records . . . that identify detainees who were  
 20 hospitalized or transferred for off-site medical care due to COVID-19, and were  
 21 subsequently released from custody while hospitalized . . . . Requested information  
 22 includes, but is not limited to . . . name and location of hospital, date of return to  
 23 detention (if any), date of release from custody or issuance of order of recognizance (if  
 24 any), and/or reason for release from custody.” Putting aside the potential applicability of  
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26 <sup>5</sup> Nor is the argument that Plaintiff’s expansive definitions of “communications”  
 27 and “documents” tracks the use of those terms in civil discovery under the Federal Rules  
 28 of Civil Procedure. Putting aside for the moment that this is FOIA and not civil  
 discovery, those definitions “only further broaden” the request. *Am. Ctr. for L. & Just.*,  
 573 F. Supp. 3d at 85.

FOIA exemptions, it is unclear whether the search should seek documents limited to records showing that the reason for release was because of or “due to COVID-19” or whether the search should seek documents showing that a detainee was released from custody while in the process of receiving off-site treatment for COVID-19 at the time of release or whether the search should seek documents showing that a detainee was released from custody who had at one point been treated off-site “due to COVID-19.” And because the terms of the request seek “any and all” records that “identify” the release of detainees, that would appear to encompass documents about the release (i.e., logistics, notices to appear) that do not themselves reflect a COVID-19 diagnosis or treatment. Plaintiff’s broad descriptions do not allow the agency “to determine precisely what records are being requested.” *Tax Analysts v. IRS*, 117 F.3d 607, 610 (D.C. Cir. 1997) (quoting *Kowalczyk v. Dep’t of Just.*, 73 F.3d 386, 388 (D.C. Cir. 1996)).

Second, the FOIA requests are exceedingly and impermissibly broad. “Even where a request ‘identif[ies] the documents requested with sufficient precision to enable the agency to identify them,’ the request may still fail to ‘reasonably describe[ ]’ the records sought if it is ‘so broad as to impose an unreasonable burden upon the agency.’” *Nat’l Sec. Couns. v. CIA*, 960 F. Supp. 2d 101, 163 (D.D.C. 2013) (quoting *Am. Fed’n Gov’t Emps. (“AFGE”) v. Dep’t of Com.*, 907 F.2d 203, 209 (D.C. Cir. 1990)). “[I]t is the requester’s responsibility to frame requests with sufficient particularity to ensure that searches are not unreasonably burdensome.” *Assassination Archives & Rsch. Ctr., Inc. v. CIA*, 720 F. Supp. 217, 219 (D.D.C. 1989), *aff’d*, No. 89-5414, 1990 WL 123924 (D.C. Cir. 1990). “Agencies must read FOIA requests as drafted,” *Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir. 1984), and thus are not obligated to construe FOIA requests to be less vague and less burdensome than the text of the requests.

According to the plain language of the FOIA requests here, Plaintiff requests that Defendants search and review the records of any and all employees that might possess records “regarding” the foregoing subjects or “identify” “detainees.” Plaintiff “does not try to cabin [its requests] to particular employees at those agencies.” *Am. Ctr. for L. &*

1 *Just. v. U.S. Dep’t of Homeland Security*, 573 F. Supp. 3d 78, 86 (D.D.C. 2021). ICE  
 2 alone has about 20,000 personnel. *See* ICE’s Mission, at <https://www.ice.gov/mission>.  
 3 Further, the FOIA requests encompass any “immigration detention facility,” which is  
 4 defined to include not just ICE-run facilities, but “contract detention facilities” run by  
 5 private companies. Dkt. 24-1 at 5. The definition also includes “intergovernmental  
 6 service agreement facilities,” which are state, county, and local jails that by agreement  
 7 with ICE, house detainees. *See Sanchez v. Decker*, Civ. A. No. 19-8354, 2019 WL  
 8 6311955, at \*5 n.4 (S.D.N.Y. 2019). Plaintiff’s national affiliate has estimated that there  
 9 are over 200 immigration detention facilities.<sup>6</sup> Plaintiff’s requests, therefore, seek in  
 10 essence “an all-encompassing search of the records of every field office” even though  
 11 “the FOIA does not mandate that [an agency] comply” with such a request. *Marks v.*  
 12 *Dep’t of Just.*, 578 F.2d 261, 263 (9th Cir. 1978); *see also AFGE*, 907 F.2d at 208-09  
 13 (holding request that “would require the Bureau to locate ‘every chronological office file  
 14 and correspondent file, internal and external, for every branch office, staff office’ does  
 15 not “‘reasonably describe[]’ a class of documents subject to disclosure”). And almost all  
 16 the requests—Nos. 1, 4 & 8—seek “[a]ny and all documents and communications”  
 17 regarding certain subjects. “The phrase ‘any and all’ is capacious, involving a huge  
 18 number of potentially responsive documents.” *Am. Ctr. for L. & Just.*, 573 F. Supp. 3d at  
 19 85; *Dale*, 238 F. Supp. 2d at 104 (“FOIA requests for all documents concerning a  
 20 requester are too broad.”).

21 As drafted, the requests do not reasonably describe records that can be located  
 22 without an unreasonable burden. Request No. 8, for example, requests “any and all”  
 23 documents, communications, and other records that “identify” any “detainees” (and by  
 24 definition, from any “immigration detention facility”) “hospitalized”<sup>7</sup> and “subsequently  
 25

26 <sup>6</sup> ACLU, *Why We’re Joining the Call to Shut Down ICE Detention Centers*, at  
 27 <https://www.aclu.org/news/immigrants-rights/why-were-joining-the-call-to-shut-down-icedetention-centers/>.

28 <sup>7</sup> Defendants’ use only the term “hospitalized” but the FOIA requests also encompass detainees “transferred from detention for off-site medical care.”

1 released from ICE custody while hospitalized.” Responding to this request would be a  
2 “massive undertaking,” *see Nat’l Sec. Couns. v. CIA*, 969 F.3d 406, 410 (D.C. Cir.  
3 2020), made all the more challenging by the fact that it places on the agency the onus of  
4 determining what records “regard[]” these detainees. Layered on top, in Request No. 9,  
5 Plaintiff seeks the “bills, invoices, charges, or payment” for all the hospitalizations.

6 Other requests have separate issues. Although Request Nos. 5 and 8 do not seek  
7 records “regarding” certain subjects, they seek “any and all” records that “identify  
8 detainees who were hospitalized” along with the dates of departure from detention,  
9 discharge from hospital, and return to detention; the date of and reason for release; the  
10 detention facility; and the medical condition or reason for hospitalization. Request No. 8  
11 seeks this and additional information. These requests resemble the request in *Krohn v.*  
12 *Dep’t of Justice*, 628 F.2d 195, 196 (D.C. Cir. 1980), which sought a variety of  
13 information about “each and every criminal case” in which judgment was entered  
14 pursuant to Fed. R. Crim. P. 32(b). The D.C. Circuit held that the request was “too  
15 vague” and explained that “[a] reasonable description requires the requested record to be  
16 reasonably identified as a record not as a general request for data, information and  
17 statistics to be gleaned generally from documents which have not been created and  
18 which the agency does not generally create or require.” *Id.* at 198. The Court continued  
19 that “the request is so broad and general as to require the agency to review the entire  
20 record of ‘each and every . . . criminal case’ in order to determine whether it contains  
21 any evidence of the data, information or statistics that appellant requests. Such request is  
22 fatally flawed by lack of a reasonable description.” *Id.* Likewise here, Plaintiff’s requests  
23 as drafted would require Defendants to review each and every case and record of a  
24 detainee who was hospitalized to effectively compile the requested information. But “an  
25 agency is not required to ‘answer questions disguised as a FOIA request,’ . . . nor  
26 conduct research in response to a FOIA request.” *Hall & Assocs. v. EPA*, 83 F. Supp. 3d  
27 92, 102 (D.D.C. 2015) (citations omitted).

28 Request Nos. 2 and 3 also do not reasonably describe the records sought and are

1 impermissibly vague. These requests seek “any and all DHS OIG reports of  
2 investigation” or “ICE [Office of Professional Responsibility] reports of investigation”  
3 “that are identified in any of the records responsive to Request #1.” One could  
4 characterize these as “springing” FOIA requests. Thus, Plaintiff requests Defendants not  
5 only produce records responsive to Request No. 1 but review those records to determine  
6 whether further searches should be conducted based on the content of those records. But  
7 “FOIA was not intended to reduce government agencies to full-time investigators on  
8 behalf of requesters.” *Assassination Archives*, 720 F. Supp. at 219. Further, the FOIA  
9 requests do not define a “report of investigation” or what would constitute  
10 “identif[ying]” those reports such that there would be a trigger for Defendants to have to  
11 search for and produce them. And again, Request Nos. 2 and 3 are based on the content  
12 of “records responsive to Request #1,” which ask for records “relating to” the  
13 hospitalization, death, decision to release, or release of four named individuals.

14       The above highlights the issues Defendants have confronted in attempting to  
15 respond to the FOIA requests here. Indeed, an agency employee familiar with the  
16 requests’ subject matter would be unable to locate the records with a “reasonable amount  
17 of effort.”

18       For Plaintiff’s part, they are apt to argue that the requests satisfy the “linchpin  
19 inquiry” when evaluating requests for reasonable description, which is “whether the  
20 agency is able to determine precisely what records (are) being requested.” *Yeager v.*  
21 *DEA*, 678 F.2d 315, 326 (D.C. Cir. 1982) (internal quotation marks omitted); *see* 6  
22 C.F.R. § 5.3(b) (description must allow personnel to locate records “with a reasonable  
23 amount of effort” through an “organized, non-random search”). But in advancing this  
24 argument, Plaintiff necessarily would be asking the Court to do what it cannot – that is,  
25 not “read the FOIA requests as drafted.” *Miller v. Casey*, 730 F.2d 773, 777 (D.C. Cir.  
26 1984). Plaintiff may also try to point to the Court’s case management order and the fact  
27 that productions have occurred. But to accept Plaintiff’s anticipated argument that  
28 because there is a case management order requiring monthly productions it necessarily

1 leads that the requests were reasonable effectively punishes Defendants for acting in  
 2 good faith to try to surmise what Plaintiff seeks with its overbroad requests rather than  
 3 litigating in the first instance. (But again, such an inquiry would also enlarge the scope of  
 4 this motion which looks only on the FOIA request as drafted.)

5 Ultimately, this motion should be granted because the FAC fails to state a claim  
 6 that Defendants improperly withheld documents responsive to FOIA requests that  
 7 “reasonably describe” the records sought. As explained, the requests are vague (i.e.,  
 8 “regarding” any detainees), unreasonably burdensome (i.e., “any and all” records  
 9 agency-wide involving any “immigrant detention facility” across the country), and  
 10 impermissibly place the onus on Defendants to become wide-ranging investigators and  
 11 researchers (i.e., collecting data on all hospitalized detainees) rather than producers of  
 12 identifiable, existing records. Accordingly, an agency employee familiar with the  
 13 requests’ subject matter would be unable to locate the records with a “reasonable amount  
 14 of effort.”

## 15 **V. CONCLUSION**

16 For the reasons discussed above, Defendants request that the Court grant this  
 17 motion and enter judgment in their favor. Such a ruling would not foreclose Plaintiff  
 18 from submitting a new proper FOIA request to obtain the records they seek.

19 Dated: July 5, 2023

Respectfully submitted,

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